

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

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JOHN ELMY, GERALD BIERNOT, and )  
DERROTIS HOLMES individually and on )  
behalf of all other similarly situated )  
persons, )  
Plaintiffs, )  
v. ) Case No.: 3:17-cv-01199  
WESTERN EXPRESS, INC., NEW )  
HORIZONS LEASING, INC., and )  
JOHN DOES 1-5, )  
Defendants. )  
Judge Campbell  
Magistrate Judge Frensley

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**NEW HORIZONS LEASING, INC.'S ANSWER TO PLAINTIFFS' SECOND  
AMENDED COLLECTIVE AND CLASS ACTION COMPLAINT**

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Defendant New Horizons Leasing, Inc. (“New Horizons”) hereby files its Answer to Plaintiff John Elmy, Gerald Biernot, and Derrotis Holmes’ Second Amended Collective and Class Action Complaint (“Second Amended Complaint”).

1. No answer is necessary in response to Paragraph 1 of the Second Amended Complaint. To the extent a response is required, New Horizons denies each and every allegation set forth in Paragraph 1 of the Second Amended Complaint, except admits that Plaintiffs purport to bring an action.

**INTRODUCTION**

2. New Horizons denies each and every allegation set forth in Paragraph 2 of the Second Amended Complaint, except admits that New Horizons is a private company.

3. New Horizons denies each and every allegation set forth in Paragraph 3, including subparagraphs a–g and footnote 1, of the Second Amended Complaint.

4. New Horizons denies each and every allegation set forth in Paragraph 4 of the Second Amended Complaint, except admits that Plaintiffs purport to bring an action as alleged.

5. New Horizons denies each and every allegation set forth in Paragraph 5 of the Second Amended Complaint, except admits that Plaintiffs purport to bring an action as alleged.

6. New Horizons denies each and every allegation set forth in Paragraph 6 of the Second Amended Complaint, except admits that Plaintiffs purport to bring an action as alleged.

7. New Horizons denies each and every allegation set forth in Paragraph 7 of the Second Amended Complaint, except admits that Plaintiffs purport to bring an action as alleged.

8. New Horizons denies each and every allegation set forth in Paragraph 8 of the Second Amended Complaint, except admits that Plaintiffs purport to bring an action as alleged.

9. New Horizons denies each and every allegation set forth in Paragraph 9 of the Second Amended Complaint, except admits that Plaintiffs purport to bring an action as alleged.

10. New Horizons denies each and every allegation set forth in Paragraph 10 of the Second Amended Complaint, except admits that Plaintiffs purport to bring an action as alleged.

#### **JURISDICTION AND VENUE**

11. New Horizons denies each and every allegation set forth in Paragraph 11 of the Second Amended Complaint, except admits that 29 U.S.C. § 216(b) of the Fair Labor Standards Act (“FLSA”) confers jurisdiction upon this Court under 28 U.S.C. § 1331, and specifically denies that the Second Amended Complaint states a claim under the FLSA against New Horizons.

12. New Horizons denies each and every allegation set forth in Paragraph 12 of the Second Amended Complaint.

13. New Horizons denies each and every allegation set forth in Paragraph 13 of the Second Amended Complaint.

14. New Horizons is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 14 of the Second Amended Complaint and therefore denies those allegations.

15. New Horizons is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 15 and footnote 2 of the Second Amended Complaint and therefore denies those allegations.

16. New Horizons is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 16 of the Second Amended Complaint and therefore denies those allegations.

17. New Horizons is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 17 of the Second Amended Complaint and therefore denies those allegations.

18. New Horizons is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 18 of the Second Amended Complaint and therefore denies those allegations.

19. New Horizons denies each and every allegation set forth in Paragraph 19 of the Second Amended Complaint, except admits that New Horizons is incorporated in Iowa.

20. New Horizons denies each and every allegation set forth in Paragraph 20 of the Second Amended Complaint, except admits that it conducts business within this district.

21. New Horizons admits Paragraph 21 of the Second Amended Complaint.

## PARTIES

22. New Horizons is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 22 of the Second Amended Complaint and therefore denies those allegations.

23. New Horizons is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 23 of the Second Amended Complaint and therefore denies those allegations.

24. New Horizons is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 24 of the Second Amended Complaint and therefore denies those allegations.

25. New Horizons denies each and every allegation set forth in Paragraph 25 of the Second Amended Complaint, except admits that Plaintiffs leased a truck from New Horizons.

26. New Horizons is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 26 of the Second Amended Complaint and therefore denies those allegations, but specifically denies that Plaintiffs were employees of or worked for New Horizons.

27. New Horizons denies each and every allegation set forth in Paragraph 27 of the Second Amended Complaint.

28. New Horizons denies each and every allegation set forth in Paragraph 28 of the Second Amended Complaint, except admits that Plaintiffs purport to bring an action as alleged.

29. New Horizons denies each and every allegation set forth in Paragraph 29 of the Second Amended Complaint, except admits that Plaintiffs purport to bring an action as alleged.

30. New Horizons denies each and every allegation set forth in Paragraph 30 of the Second Amended Complaint, except admits that Plaintiffs purport to bring an action as alleged. New Horizons specifically denies that the class of persons should encompass individuals up through the date of final judgment as alleged.

31. New Horizons admits Paragraph 31 of the Second Amended Complaint.

32. New Horizons denies each and every allegation set forth in Paragraph 32, including subparagraphs a–m, of the Second Amended Complaint.

33. New Horizons denies each and every allegation set forth in Paragraph 33, including subparagraphs a–f, of the Second Amended Complaint.

34. New Horizons denies each and every allegation set forth in Paragraph 34 of the Second Amended Complaint.

35. New Horizons denies each and every allegation set forth in Paragraph 35, including subparagraphs g–k, of the Second Amended Complaint.

36. New Horizons is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 36 of the Second Amended Complaint and therefore denies those allegations.

37. New Horizons denies each and every allegation set forth in Paragraph 37 of the Second Amended Complaint.

38. New Horizons admits Paragraph 38 of the Second Amended Complaint.

39. New Horizons denies each and every allegation set forth in Paragraph 39 of the Second Amended Complaint, except admits that Western Express, Inc. (“Western”) has an office at 7135 Centennial Place, Nashville, TN 37209.

40. New Horizons and is without knowledge or information sufficient to form a belief as to the truth of the other allegations in Paragraph 40 of the Second Amended Complaint and therefore denies those allegations.

41. New Horizons admits Paragraph 41 of the Second Amended Complaint.

42. New Horizons admits that both New Horizons and Western have offices at 7135 Centennial Place in Nashville, Tennessee.

43. New Horizons denies each and every allegation set forth in Paragraph 43 of the Second Amended Complaint, except admits that the companies are related and New Horizons leases trucks to individuals who may also drive for Western.

44. New Horizons denies each and every allegation set forth in Paragraph 44 of the Second Amended Complaint.

45. New Horizons denies each and every allegation set forth in Paragraph 45 of the Second Amended Complaint, except admits that Paul Wieck and Richard Prickett have an ownership interest in both New Horizons and Western.

46. New Horizons denies each and every allegation set forth in Paragraph 46 of the Second Amended Complaint, except admits that the two entities share some overlap in officers and directors.

47. New Horizons denies each and every allegation set forth in Paragraph 47 of the Second Amended Complaint.

48. New Horizons denies each and every allegation set forth in Paragraph 48 of the Second Amended Complaint.

49. New Horizons admits that New Horizons conducts business throughout the country and is without knowledge or information sufficient to form a belief as to the truth of the other

allegations in Paragraph 49 of the Second Amended Complaint and therefore denies those allegations.

50. New Horizons admits that it has individually grossed more than \$500,000 in each of the last three calendar years and is without knowledge or information sufficient to form a belief as to the truth of the other allegations in Paragraph 50 of the Second Amended Complaint and therefore denies those allegations.

51. New Horizons denies that it is engaged in interstate commerce but admits that it leases trucks to individuals who use those trucks to engage in interstate commerce for the carriers they drive for. New Horizons specifically denies that the Second Amended Complaint states a claim under the Fair Labor Standards Act. New Horizons is without knowledge or information sufficient to form a belief as to the truth of the other allegations in Paragraph 51 of the Second Amended Complaint and therefore denies those allegations.

52. New Horizons denies each and every allegation set forth in Paragraph 52 of the Second Amended Complaint.

53. New Horizons denies each and every allegation set forth in Paragraph 53 of the Second Amended Complaint.

## **FACTUAL BACKGROUND**

54. New Horizons denies each and every allegation set forth in Paragraph 54 of the Second Amended Complaint and also denies each and every allegation set forth in heading A. above Paragraph 54.

55. New Horizons denies each and every allegation set forth in Paragraph 55 of the Second Amended Complaint.

56. New Horizons is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 56 of the Second Amended Complaint and therefore denies those allegations.

57. New Horizons is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 57 of the Second Amended Complaint and therefore denies those allegations.

58. New Horizons is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 58 of the Second Amended Complaint and therefore denies those allegations.

59. New Horizons is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 59 of the Second Amended Complaint and therefore denies those allegations.

60. New Horizons denies each and every allegation set forth in Paragraph 60 of the Second Amended Complaint.

61. New Horizons denies each and every allegation set forth in Paragraph 61 of the Second Amended Complaint.

62. New Horizons denies each and every allegation set forth in Paragraph 62 of the Second Amended Complaint.

63. New Horizons is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 63 of the Second Amended Complaint and therefore denies those allegations.

64. New Horizons denies each and every allegation set forth in Paragraph 64 of the Second Amended Complaint.

65. New Horizons denies each and every allegation set forth in Paragraph 65 of the Second Amended Complaint.

66. New Horizons denies each and every allegation set forth in Paragraph 66 of the Second Amended Complaint.

67. New Horizons denies each and every allegation set forth in Paragraph 67 of the Second Amended Complaint.

68. New Horizons is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 68 of the Second Amended Complaint and therefore denies those allegations.

69. New Horizons denies each and every allegation set forth in Paragraph 69 of the Second Amended Complaint.

70. New Horizons denies each and every allegation set forth in Paragraph 70 of the Second Amended Complaint.

71. New Horizons denies each and every allegation set forth in Paragraph 71 of the Second Amended Complaint.

72. New Horizons denies each and every allegation set forth in Paragraph 72 of the Second Amended Complaint, and also denies each and every allegation set forth in heading B. above Paragraph 72.

73. New Horizons denies each and every allegation set forth in Paragraph 73 of the Second Amended Complaint.

74. New Horizons denies each and every allegation set forth in Paragraph 74 of the Second Amended Complaint.

75. New Horizons denies each and every allegation set forth in Paragraph 75 of the Second Amended Complaint.

76. New Horizons denies each and every allegation set forth in Paragraph 76 of the Second Amended Complaint.

77. New Horizons denies each and every allegation set forth in Paragraph 77 of the Second Amended Complaint.

78. New Horizons is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 78 of the Second Amended Complaint and therefore denies those allegations.

79. New Horizons is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 79 of the Second Amended Complaint and therefore denies those allegations.

80. New Horizons is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 80 of the Second Amended Complaint and therefore denies those allegations.

81. New Horizons denies each and every allegation set forth in Paragraph 81 of the Second Amended Complaint.

82. New Horizons denies each and every allegation set forth in Paragraph 82 of the Second Amended Complaint.

83. New Horizons denies each and every allegation set forth in Paragraph 83 of the Second Amended Complaint.

84. New Horizons is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 84 of the Second Amended Complaint and therefore denies those allegations.

85. New Horizons denies each and every allegation set forth in Paragraph 85 of the Second Amended Complaint.

86. New Horizons denies each and every allegation set forth in Paragraph 86 of the Second Amended Complaint.

87. New Horizons denies each and every allegation set forth in Paragraph 87 of the Second Amended Complaint.

88. New Horizons is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 88 of the Second Amended Complaint and therefore denies those allegations. New Horizons also denies each and every allegation set forth in heading C. above Paragraph 88.

89. New Horizons denies each and every allegation set forth in Paragraph 89 of the Second Amended Complaint.

90. New Horizons denies each and every allegation set forth in Paragraph 90 of the Second Amended Complaint.

91. New Horizons denies each and every allegation set forth in Paragraph 91 of the Second Amended Complaint.

92. New Horizons denies each and every allegation set forth in Paragraph 92 of the Second Amended Complaint.

93. New Horizons denies each and every allegation set forth in Paragraph 93 of the Second Amended Complaint.

94. New Horizons denies each and every allegation set forth in Paragraph 94 of the Second Amended Complaint.

95. New Horizons denies each and every allegation set forth in Paragraph 95 of the Second Amended Complaint.

96. New Horizons is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 96 of the Second Amended Complaint and therefore denies those allegations.

97. New Horizons denies each and every allegation set forth in Paragraph 97 of the Second Amended Complaint.

98. New Horizons denies each and every allegation set forth in Paragraph 98 of the Second Amended Complaint.

99. New Horizons denies each and every allegation set forth in Paragraph 99 of the Second Amended Complaint.

100. New Horizons denies each and every allegation set forth in Paragraph 100 of the Secord Amended Complaint.

101. New Horizons is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 101 of the Second Amended Complaint and therefore denies those allegations.

102. New Horizons denies each and every allegation set forth in Paragraph 102 of the Second Amended Complaint.

103. New Horizons denies each and every allegation set forth in Paragraph 103 of the Second Amended Complaint.

104. New Horizons denies each and every allegation set forth in Paragraph 104 of the Second Amended Complaint and also denies each and every allegation set forth in heading D. above Paragraph 104.

105. New Horizons denies each and every allegation set forth in Paragraph 105 of the Second Amended Complaint.

106. New Horizons denies each and every allegation set forth in Paragraph 106 of the Second Amended Complaint.

107. New Horizons denies each and every allegation set forth in Paragraph 107 of the Second Amended Complaint and also denies each and every allegation set forth in heading E. above Paragraph 107.

108. New Horizons denies each and every allegation set forth in Paragraph 108 of the Second Amended Complaint.

109. New Horizons denies each and every allegation set forth in Paragraph 109 of the Second Amended Complaint.

110. New Horizons denies each and every allegation set forth in Paragraph 110 of the Second Amended Complaint.

111. New Horizons denies each and every allegation set forth in Paragraph 111 of the Second Amended Complaint.

112. New Horizons denies each and every allegation set forth in Paragraph 112 of the Second Amended Complaint.

113. New Horizons denies each and every allegation set forth in Paragraph 113 of the Second Amended Complaint.

114. New Horizons denies each and every allegation set forth in Paragraph 114 of the Second Amended Complaint.

115. New Horizons incorporates its answers and responses to the foregoing paragraphs as if set forth in their entirety and also denies each and every allegation set forth in heading F. above Paragraph 115.

116. New Horizons denies each and every allegation set forth in Paragraph 116 of the Second Amended Complaint.

117. New Horizons refers and cites to 49 C.F.R. § 376.12(a) for a complete and accurate recitation of the requirements of that regulation and denies all allegations in Paragraph 117 that are contrary to that regulation.

118. New Horizons denies each and every allegation set forth in Paragraph 118 of the Second Amended Complaint.

119. New Horizons is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 119, including subparagraphs a-q, of the Second Amended Complaint and therefore denies those allegations. New Horizons further denies that Exhibit A is attached to the Second Amended Complaint.

120. New Horizons is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 120, including subparagraphs a and b, of the Second Amended Complaint and therefore denies those allegations.

121. New Horizons denies each and every allegation set forth in Paragraph 121, including subparagraphs a-d, of the Second Amended Complaint.

122. New Horizons denies each and every allegation set forth in Paragraph 122 of the Second Amended Complaint.

123. New Horizons denies each and every allegation set forth in Paragraph 123 of the Second Amended Complaint as well as each and every allegation set forth in heading G. above Paragraph 123. New Horizons further denies that Exhibit A is attached to the Second Amended Complaint.

124. New Horizons denies each and every allegation set forth in Paragraph 124 of the Second Amended Complaint. New Horizons further denies that Exhibit A is attached to the Second Amended Complaint.

125. New Horizons denies each and every allegation set forth in Paragraph 125 of the Second Amended Complaint.

126. New Horizons is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 126, including subparagraphs a-c, of the Second Amended Complaint and therefore denies those allegations. New Horizons further denies that Exhibit B is attached to the Second Amended Complaint.

127. New Horizons is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 127 of the Second Amended Complaint and therefore denies those allegations.

128. New Horizons is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 128 of the Second Amended Complaint and therefore denies those allegations.

129. New Horizons denies each and every allegation set forth in Paragraph 129 of the Second Amended Complaint.

130. New Horizons denies each and every allegation set forth in Paragraph 130 of the Second Amended Complaint.

131. New Horizons is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 131 of the Second Amended Complaint and therefore denies those allegations. New Horizons also denies each and every allegation set forth in heading H. above Paragraph 131. New Horizons further denies each and every allegation set forth in the heading "Plaintiff John Elmy" above Paragraph 131.

132. New Horizons is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 132 of the Second Amended Complaint and therefore denies those allegations.

133. New Horizons is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 133 of the Second Amended Complaint and therefore denies those allegations.

134. New Horizons is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 134 of the Second Amended Complaint and therefore denies those allegations.

135. New Horizons is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 135 of the Second Amended Complaint and therefore denies those allegations.

136. New Horizons is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 136 of the Second Amended Complaint and therefore denies those allegations.

137. New Horizons denies each and every allegation set forth in Paragraph 137 of the Second Amended Complaint as to the Lease agreement, and is without knowledge or information

sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 137 of the Second Amended Complaint and therefore denies those allegations.

138. New Horizons denies each and every allegation set forth in Paragraph 138 of the Second Amended Complaint.

139. New Horizons is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 139 of the Second Amended Complaint and therefore denies those allegations.

140. New Horizons is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 140 of the Second Amended Complaint and therefore denies those allegations.

141. New Horizons denies each and every allegation set forth in Paragraph 141 of the Second Amended Complaint.

142. New Horizons is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 142 of the Second Amended Complaint and therefore denies those allegations.

143. New Horizons denies each and every allegation set forth in Paragraph 143 of the Second Amended Complaint.

144. New Horizons denies each and every allegation set forth in Paragraph 144 of the Second Amended Complaint.

145. New Horizons denies each and every allegation set forth in Paragraph 145 of the Second Amended Complaint.

146. New Horizons denies each and every allegation set forth in Paragraph 146 of the Second Amended Complaint.

147. New Horizons is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 147 of the Second Amended Complaint and therefore denies those allegations. New Horizons also denies each and every allegation set forth in the heading "Plaintiff Gerald Biernot" above Paragraph 147.

148. New Horizons is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 148 of the Second Amended Complaint and therefore denies those allegations.

149. New Horizons denies each and every allegation set forth in Paragraph 149 of the Second Amended Complaint.

150. New Horizons denies each and every allegation set forth in Paragraph 150 of the Second Amended Complaint.

151. New Horizons is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 151 of the Second Amended Complaint and therefore denies those allegations.

152. New Horizons denies each and every allegation set forth in Paragraph 152 of the Second Amended Complaint.

153. New Horizons denies each and every allegation set forth in Paragraph 153 of the Second Amended Complaint as to the Lease agreement, and is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 153 of the Second Amended Complaint and therefore denies those allegations.

154. New Horizons denies each and every allegation set forth in Paragraph 154 of the Second Amended Complaint.

155. New Horizons denies each and every allegation set forth in Paragraph 155 of the Second Amended Complaint.

156. New Horizons denies each and every allegation set forth in Paragraph 156 of the Second Amended Complaint.

157. New Horizons denies each and every allegation set forth in Paragraph 157 of the Second Amended Complaint.

158. New Horizons denies each and every allegation set forth in Paragraph 158 of the Second Amended Complaint.

159. New Horizons denies each and every allegation set forth in Paragraph 159 of the Second Amended Complaint.

160. New Horizons is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 160 of the Second Amended Complaint and therefore denies those allegations. New Horizons also denies each and every allegation set forth in the heading "Plaintiff Derrotis Holmes" above Paragraph 160.

161. New Horizons is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 161 of the Second Amended Complaint and therefore denies those allegations.

162. New Horizons is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 162 of the Second Amended Complaint and therefore denies those allegations.

163. New Horizons denies each and every allegation set forth in Paragraph 163 of the Second Amended Complaint.

164. New Horizons denies each and every allegation set forth in Paragraph 164 of the Second Amended Complaint.

165. New Horizons denies each and every allegation set forth in Paragraph 165 of the Second Amended Complaint.

166. New Horizons denies each and every allegation set forth in Paragraph 166 of the Second Amended Complaint.

167. New Horizons denies each and every allegation set forth in Paragraph 167 of the Second Amended Complaint.

168. New Horizons denies each and every allegation set forth in Paragraph 168 of the Second Amended Complaint.

169. New Horizons denies each and every allegation set forth in Paragraph 169 of the Second Amended Complaint.

170. New Horizons denies each and every allegation set forth in Paragraph 170 of the Second Amended Complaint.

171. New Horizons denies each and every allegation set forth in Paragraph 171 of the Second Amended Complaint.

172. New Horizons denies each and every allegation set forth in Paragraph 172 of the Second Amended Complaint and also denies each and every allegation set forth in heading I. above Paragraph 172.

173. New Horizons denies each and every allegation set forth in Paragraph 173 of the Second Amended Complaint.

174. New Horizons denies each and every allegation set forth in Paragraph 174 of the Second Amended Complaint.

175. New Horizons denies each and every allegation set forth in Paragraph 175 of the Second Amended Complaint.

### **CAUSES OF ACTION**

#### **FIRST CAUSE OF ACTION (FEDERAL FAIR LABOR STANDARDS ACT)**

176. New Horizons incorporates its answers and responses to the preceding paragraphs numbered 1-175 of the Second Amended Complaint as if fully set forth herein.

177. New Horizons denies each and every allegation set forth in Paragraph 177 of the Second Amended Complaint.

178. New Horizons denies each and every allegation set forth in Paragraph 178 of the Second Amended Complaint.

179. New Horizons denies each and every allegation set forth in Paragraph 179 of the Second Amended Complaint.

#### **SECOND CAUSE OF ACTION (TENNESSEE COMMON LAW FRAUD)**

180. New Horizons incorporates its answers and responses to the preceding paragraphs numbered 1-179 of the Second Amended Complaint as if fully set forth herein.

181. New Horizons denies each and every allegation set forth in Paragraph 181 of the Second Amended Complaint.

182. New Horizons denies each and every allegation set forth in Paragraph 182 of the Second Amended Complaint.

183. New Horizons denies each and every allegation set forth in Paragraph 183 of the Second Amended Complaint.

184. New Horizons denies each and every allegation set forth in Paragraph 184 of the Second Amended Complaint.

185. New Horizons denies each and every allegation set forth in Paragraph 185 of the Second Amended Complaint.

186. New Horizons denies each and every allegation set forth in Paragraph 186 of the Second Amended Complaint.

**THIRD CAUSE OF ACTION  
(TENNESSEE COMMON LAW NEGLIGENCE MISREPRESENTATION)**

187. New Horizons incorporates its answers and responses to the preceding paragraphs numbered 1-186 of the Second Amended Complaint as if fully set forth herein.

188. New Horizons denies each and every allegation set forth in Paragraph 188 of the Second Amended Complaint.

189. New Horizons denies each and every allegation set forth in Paragraph 189 of the Second Amended Complaint.

190. New Horizons denies each and every allegation set forth in Paragraph 190 of the Second Amended Complaint.

191. New Horizons denies each and every allegation set forth in Paragraph 191 of the Second Amended Complaint.

192. New Horizons denies each and every allegation set forth in Paragraph 192 of the Second Amended Complaint.

**FOURTH CAUSE OF ACTION  
(TENNESSEE COMMON LAW UNENFORCEABLE CONTRACT)**

193. New Horizons incorporates its answers and responses to the preceding paragraphs numbered 1-192 of the Second Amended Complaint as if fully set forth herein.

194. New Horizons denies each and every allegation set forth in Paragraph 194 of the Second Amended Complaint.

195. New Horizons denies each and every allegation set forth in Paragraph 195 of the Second Amended Complaint.

196. New Horizons denies each and every allegation set forth in Paragraph 196 of the Second Amended Complaint.

**FIFTH CAUSE OF ACTION  
(TENNESSEE COMMON LAW UNJUST ENRICHMENT)**

197. New Horizons incorporates its answers and responses to the preceding paragraphs numbered 1-196 of the Second Amended Complaint as if fully set forth herein.

198. New Horizons denies each and every allegation set forth in Paragraph 198 of the Second Amended Complaint.

199. New Horizons denies each and every allegation set forth in Paragraph 199 of the Second Amended Complaint.

200. New Horizons denies each and every allegation set forth in Paragraph 200 of the Second Amended Complaint.

201. New Horizons denies each and every allegation set forth in Paragraph 201 of the Second Amended Complaint.

202. New Horizons denies each and every allegation set forth in Paragraph 202 of the Second Amended Complaint.

**SIXTH CAUSE OF ACTION  
(FEDERAL FORCED LABOR)**

203. New Horizons incorporates its answers and responses to the preceding paragraphs numbered 1-202 of the Second Amended Complaint as if fully set forth herein.

204. New Horizons denies each and every allegation set forth in Paragraph 204 of the Second Amended Complaint.

205. New Horizons denies each and every allegation set forth in Paragraph 205 of the Second Amended Complaint.

206. New Horizons denies each and every allegation set forth in Paragraph 206 of the Second Amended Complaint.

207. New Horizons denies each and every allegation set forth in Paragraph 207 of the Second Amended Complaint.

**SEVENTH CAUSE OF ACTION  
(TRUTH-IN-LEASING ACT)**

208. New Horizons incorporates its answers and responses to the preceding paragraphs numbered 1-207 of the Second Amended Complaint as if fully set forth herein.

209. New Horizons denies each and every allegation set forth in Paragraph 209 of the Second Amended Complaint.

210. New Horizons denies each and every allegation set forth in Paragraph 210 of the Second Amended Complaint.

**EIGHTH CAUSE OF ACTION  
(BREACH OF CONTRACT)**

211. New Horizons incorporates its answers and responses to the preceding paragraphs numbers 1-210 of the Second Amended Complaint as if fully set forth herein.

212. New Horizons denies each and every allegation set forth in Paragraph 212 of the Second Amended Complaint.

213. New Horizons denies each and every allegation set forth in Paragraph 213 of the Second Amended Complaint.

214. Any and all allegations contained in the Second Amended Complaint that have not been previously specifically admitted or denied, are hereby denied.

215. New Horizons denies that Plaintiffs, or any allegedly similarly situated individual, or any purported class or collective action member, are entitled to any of the relief prayed for in the Second Amended Complaint.

## **AFFIRMATIVE AND OTHER DEFENSES**

### **First Defense**

1. The activities for which Plaintiffs alleges they and the putative class were not properly compensated do not constitute compensable work under the FLSA and/or any other claimed state or federal law.

### **Second Defense**

2. Plaintiffs' Second Amended Complaint fails to state a claim upon which relief can be granted.

### **Third Defense**

3. Plaintiffs and the putative class were not hired or retained by New Horizons and did not perform any services or work for New Horizons. New Horizons operates as a separate and distinct entity from Western, and Plaintiffs cannot show that the two separate entities should be treated as a single entity under enterprise coverage pursuant to 29 U.S.C. § 203(r)(1). Accordingly, the FLSA does not apply to New Horizons.

### **Fourth Defense**

4. The FLSA does not apply to Plaintiffs' claims against New Horizons. If the FLSA is found to apply, at all times relevant to Plaintiffs' Second Amended Complaint New Horizons

acted in good faith in attempting to comply with any obligations it may have had under the FLSA. Accordingly, liquidated damages are not available or warranted under the provisions of the FLSA.

#### **Fifth Defense**

5. If the FLSA is found to apply, any purported violation of the FLSA by New Horizons—which New Horizons denies in its entirety—was not willful, and therefore all claims are limited by a two-year limitations period. Accordingly, the relevant time period in this case should run two (2) years back from August 25, 2017 to August 25, 2015 and any alleged claims for the period prior to August 25, 2015 are time-barred.

#### **Sixth Defense**

6. To the extent applicable, Plaintiffs' claims and members of the purported class and/or collective action are precluded by their own actions and therefore barred by the equitable doctrines of waiver, estoppel, unclean hands, and/or laches.

#### **Seventh Defense**

7. Even assuming, arguendo, that Plaintiffs' Second Amended Complaint is partially correct, Plaintiffs and members of the purported class and/or collective action seek compensation for time that is de minimus.

#### **Eighth Defense**

8. Plaintiffs and the putative class they purport to represent were paid all payments that were due and owing, and to which they were entitled under the FLSA and Tennessee state law.

#### **Ninth Defense**

9. Plaintiffs and members of the purported class and/or collective action are not similarly situated. As a result, the potential claims of the purported class and/or collective action

members would differ and/or vary greatly and on a case-by-case basis, thus requiring the Court to engage in numerous individualized determinations if the class and/or collective action were certified, and such class and/or collective action should not be certified.

**Tenth Defense**

10. The class action portion of the Second Amended Complaint seeking class-wide relief must be dismissed, as Plaintiffs cannot satisfy the requirements for maintenance of a class action under Fed. R. Civ. P. 23.

**Eleventh Defense**

11. Because Plaintiffs and each purported class and/or collective action member, signed a separate lease agreement with New Horizons, and maintained their own separate and distinct business relationships with New Horizons, Plaintiffs are not representative of the purported class and/or collective action and the case cannot proceed as a class or collective action.

**Twelfth Defense**

12. The collective action portion of the Second Amended Complaint seeking class-wide relief must be dismissed, as Plaintiffs cannot satisfy the requirements for maintenance of a collective action under Section 216 of the FLSA, or otherwise.

**Thirteenth Defense**

13. Plaintiffs' claims are barred in whole or in part by the applicable statutes of limitations.

**Fourteenth Defense**

14. Plaintiffs' alleged damages were not proximately caused by any unlawful policy, custom, practice, and/or procedure promulgated and/or undertaken by New Horizons.

### **Fifteenth Defense**

15. Although New Horizons denies that Plaintiffs and members of the purported class and/or collective action are entitled to any relief, New Horizons asserts that any claimed damages arose as a result of their own actions, or failures to act, and they have failed to mitigate their alleged damages. To the extent that Plaintiffs and members of the purported class and/or collective action have mitigated their damages, they may not recover for any alleged damages so mitigated.

### **Sixteenth Defense**

16. Plaintiffs' Second Amended Complaint does not describe some or all of the claims asserted against New Horizons with sufficient particularity to enable New Horizons to determine all of the defenses and/or claims available to New Horizons in response to that action. Therefore, New Horizons reserves the right to assert all defenses and/or claims that may be applicable to the claims alleged until such time as the precise nature of the various claims are ascertained and all facts are discovered.

### **Seventeenth Defense**

17. Neither Plaintiffs nor any of the alleged class members provided services or worked for, entered into service as an employee or independent contractor with, or were in any form employed or retained by New Horizons and, therefore, Plaintiffs' Second Amended Complaint fails to state a claim upon which relief can be granted as to New Horizons.

### **Eighteenth Defense**

18. Plaintiffs' claims are preempted in whole or in part by the Federal Arbitration Act and the Tennessee Uniform Arbitration Act.

### **Nineteenth Defense**

19. The FLSA does not apply to New Horizons because under the Equipment Lease

Plaintiffs signed with New Horizons they do not receive any wages, compensation or payments of any kind or nature from New Horizons but rather are obligated to make Rental Payments to New Horizons as specified in the Equipment Lease and Schedule A thereto.

**WHEREFORE** having fully answered, New Horizons prays that this Court dismiss this action against New Horizons with prejudice and enter judgment in favor of New Horizons with costs of suit and such other and further relief as the Court deems proper, including, but not limited to, attorneys' fees, costs, and expenses.

Dated: June 29, 2020

Respectfully submitted,

/s/ Mark E. Hunt  
R. Eddie Wayland (No. 6045)  
Mark E. Hunt (No. 10501)  
Hunter K. Yoches (No. 36267)  
KING & BALLOW  
315 Union Street  
Suite 1100  
Nashville, TN 37201  
(615) 726-5430  
[rew@kingballow.com](mailto:rew@kingballow.com)  
[mhunt@kingballow.com](mailto:mhunt@kingballow.com)  
[blemly@kingballow.com](mailto:blemly@kingballow.com)  
*Attorneys for New Horizons Express,  
Inc. and New Horizons Leasing, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing pleading was electronically filed with the Court and electronically served on date reflected in the ECF system upon:

Mike Sweeney  
Lesley Tse  
Getman, Sweeney & Dunn, PLLC  
260 Fair Street  
Kingston, NY 12401  
Phone: (845) 255-9370

Justin L. Swidler  
SWARTZ SWIDLER LLC  
1101 Kings Hwy N.  
Suite 402  
Cherry Hill, NJ 08034  
Phone: (856) 685-7420

Charles Yezbak  
Yezbak Law Offices  
2002 Richard Jones Road  
Suite B-200  
Nashville, TN 37215

By: /s/ Mark E. Hunt  
Mark E. Hunt